1986

Verlora Carlton v. Frank Hayden Carlton : Brief of Appellant

Utah Court of Appeals

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

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VERLORA CARLTON,	:	
Plaintiff-Respondent,	:	
v.	:	Case No. 860247-CA
FRANK HAYDEN CARLTON,	:	Priority: 13(b)*
Defendant-Appellant.	:	(* Ut. Sup. Ct. System)

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APPELLANT'S BRIEF

Appeal from the Decree of Divorce of the Third District Court in and for Salt Lake County, The Honorable Jay E. Banks presiding

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PARTIES

The only parties to this appeal are the husband and wife identified in the caption of the case, whose marriage was terminated by the Decree of Divorce from which this appeal is taken.

STATEMENT OF JURISDICTION

This is an appeal of the property distribution entered by the District Court of the Third Judicial District in and for Salt Lake County, State of Utah, the Honorable Jay E. Banks presiding. At the time of the filing of this appeal, the Utah Supreme Court had appellate jurisdiction pursuant to Article VIII, Section 9, of the Constitution of the State of Utah, Section 78-2-2, Utah Code Annotated (1953 as amended), and Rule 3 of the Utah Rules of Appellate Procedure. Appellant was notified by letter dated January 28, 1987, from the Clerk of the Court of Appeals that this case had been assigned to the Utah Court of Appeals.

ISSUES PRESENTED

1. Did the trial court err in failing to enter Findings of Fact and Conclusions of Law sufficient to identify and evaluate the parties' respective pre-marital assets?

2. Did the trial court err in failing to enter Findings of Fact and Conclusions of Law having sufficient specificity to permit a determination of the parties' marital estate as distinguished from their respective pre-marital assets?

3. Did the trial court err in awarding a substantial portion of Appellant's pre-marital assets to Respondent in the absence of any special circumstances or unique factors justifying such an award?

NATURE OF CASE

This is a divorce action involving a 5-1/2 year marriage between older parties. There were no children born during the marriage. A two-day trial was held before the Honorable Jay E. Banks on December 18 and 19, 1985, at the conclusion of which the trial court took the matter under advisement. More than six months later, the trial judge announced his ruling to counsel in an unreported conference in chambers. Proposed Findings of Fact and Conclusions of Law were prepared by Respondent's counsel (R. at 184-194), and objected to by Appellant's counsel (R. at 175-177). Thereafter, the proposed Findings of Fact and Conclusions of Law were entered by the trial court without modification on August 22, 1986, together with the Decree of Divorce (R. at 195-200). This appeal is from the property distribution provisions of the Decree.

STATEMENT OF FACTS

The parties were married June 13, 1979, in Garden City, Utah. (R. at 260.) The marriage ended just 5-1/2 years later in December of 1984 (R. at 260), when Defendant-Appellant Frank Hayden Carlton (hereinafter "Mr. Carlton") returned from a business trip to Wyoming to discover that Plaintiff-Respondent Verlora Carlton (hereinafter "Mrs. Carlton") had filed a Complaint for divorce and left their residence, taking all of her belongings with her (R. at 386). Both parties had been married several previous times and had children from those prior marriages (R. at 330); however, no children were born as issue of the marriage (R. at 260).

Prior to the marriage, Mrs. Carlton was a cosmetologist in Saratoga, Wyoming, where she operated a beauty shop. (R. at 264.) During the two years prior to the marriage, she had realized gross earnings of just under $1,100.00 per month. (R. at 340.) At the time of trial, Mrs. Carlton was 49 years of age. (R. at 330-31.)

On the other hand, Mr. Carlton was, at the time of trial, a few days away from his 65th birthday. (R. at 331.) Throughout the marriage, he was a certified public accountant (R. at 385) with an arduous practice (R. at 385), which serviced approximately 600 clients (R. at 441).

The parties agreed at the time of their marriage that they would each keep their own property separate (R. at 389) and at the time of the divorce each still had their property in their own separate names. Mrs. Carlton acknowledged at trial that Mr. Carlton was "very private" about

his financial affairs (R. at 275), and acknowledged that they did not discuss his assets prior to the marriage (R. at 272), noting that she first learned the details of his holdings from the financial declaration that he filed in the divorce proceedings (R. at 272).

In preparation for the marriage, Mrs. Carlton sold her beauty shop business in Wyoming, receiving approximately $7,000.00 for it. (R. at 265.) She also sold a house that she had been purchasing in Wyoming, from which she netted $10,000.00. (R. at 266.) She also brought to the marriage a 1977 Cordoba, with a value of approximately $4,000.00, and an IRA account with a balance of slightly less than $4,000.00. (R. at 266.) The assets that Mrs. Carlton held, at the time of, and at the conclusion of, the marriage were detailed in Exhibit 26-D (received R. at 335, reproduced infra at A-23). In total, Mrs. Carlton brought into the marriage slightly less than $25,000.00.

On the other hand, Mr. Carlton brought assets to the marriage having an aggregate value of more than $750,000.00. (R. at 418.) These assets included a duplex located on "K" Street in Salt Lake City, in which the parties resided (R. at 271), land with a summer home on Bear Lake in Rich County (R. at 139-141), and various securities (R. at 396). The specific assets brought into the marriage by Mr. Carlton, as well as the specific assets held by him at the end of the marriage, were detailed in Exhibit 35-D (received, R. at 135, reproduced infra at A-26).

The appraiser called at trial by Mrs. Carlton, Robert R. Terrell, testified that he was of the opinion that the "K" Street property had a value at the time of trial of $122,500.00 (R. at 296); similarly, Jerry R. Webber, a

professional appraiser called by Mr. Carlton, testified that it was his opinion that the "K" Street property had a value at the time of trial of $122,000.00 (R. at 408). While the two appraisers had no real dispute as to the value of the "K" Street property at the time of the trial, they did not agree as to its value at the time of the marriage. Mr. Terrell testified that he felt the property had a value of $95,000.00 in June of 1979 (R. at 296), but could offer no specific comparable sales on which he based this opinion (R. at 299). Mr. Webber, on the other hand, based upon four specific comparables, including two sales that he had personally been involved with, testified that, in his opinion, the property would have been worth $116,000.00 in June of 1979. (R. at 408.) There was no evidence of any changes or improvements to the property during the marriage.

With respect to the Bear Lake property, Mr. Carlton testified without contradiction that the property had been worth $300,000.00 at the time of the marriage. (R. at 396.) He based that figure, in part, upon the fact that he had received an offer in that amount from a realtor at about the time of the marriage. (R. at 396.) He testified, also without contradiction, that by the time of the trial, the value of the Bear Lake property had declined to $200,000.00 because of adverse economic conditions in the area. (R. at 395.)

During the marriage, inflation as measured by the Consumer Price Index caused a substantial diminution in the purchasing value of the dollar, so that each dollar of value held by the parties at the termination of their marriage was worth less than 69 cents when compared with the dollars they held at the time of their marriage. (See, Exhibit 30-D, received R. at 335,

reproduced infra at A-24.) Without taking this very real loss of purchasing power into account, Mr. Carlton's assets appreciated by approximately $75,000.00 during the marriage. (See, Exhibit 35-D, reproduced infra at A-26.) It was Mr. Carlton's uncontradicted testimony at trial that his assets "just sat accumulating value on their own without further investment" during the marriage (R. at 397); in other words, the increase in the gross value of his assets was due to passive appreciation rather than active management.

Mrs. Carlton did not work during the marriage; instead, she was able to accompany Mr. Carlton on the substantial amount of traveling that he did in connection with his activities with the National Society of Public Accountants. (R. at 297.) These activities took the parties to fine hotels and nice resort areas, with many pleasant activities. (R. at 348.) Because of her husband's employment and the opportunities that it afforded, Mrs. Carlton enjoyed the pleasure of activities not available to her prior to the marriage. (R. at 348.)

During 1984, Mr. Carlton's professional employment provided an average net monthly income of slightly more than $5,000.00, although he estimated that his 1985 income would be reduced, due to his advancing age and employee problems within his office. (R. at 386-88.) At the time of trial, Mrs. Carlton was earning $800.00 per month. (R. at 327.) She testified that while she was in good health and possessed both a degree in cosmetology and a Wyoming cosmetology license, she did not want to return to Wyoming because "the economy went bad" (R. at 339) and "there is a beauty shop on every corner" in Wyoming (R. at 352). She acknowledged that she could obtain a Utah cosmetology license by taking a five-hour test (R. at 341-42)

but admitted that she had not done so prior to the time of trial (R. at 342), which was a year after the parties' separation.

Mrs. Carlton acknowledged that during the year's separation prior to trial, she had received more than $21,000.00 in cash from Mr. Carlton by way of temporary support. (R. at 328.) From the time of trial through June 2, 1986, when a hearing was held before Judge Banks on Mr. Carlton's motion to terminate the temporary alimony based upon the allegation that Mrs. Carlton was cohabiting with a male, an additional $8,000.00 in temporary support was paid to her. Additionally, she still had in her name assets totaling just over $22,000.00, which she had acquired with the proceeds of her Wyoming business and home (R. at 333 and see Exhibit 26-D, reproduced infra at A-23). Mrs. Carlton also acknowledged at trial that, during the marriage, she had spent "quite a bit" of money on her children from previous marriages. (R. at 333.)

Having taken the matter under advisement on December 19, 1985, at the conclusion of the second day of trial, Judge Banks did not rule on this matter until July 11, 1986, some five weeks after the June 2, 1986, hearing on Mr. Carlton's motion to terminate the temporary support based upon Mrs. Carlton's alleged cohabitation. More than a month later, without the benefit of either a written memorandum decision or a reporter's transcript, Judge Banks notified the parties' counsel of his decision. Findings of Fact and Conclusions of Law were prepared by Mrs. Carlton's counsel and entered by Judge Banks over Mr. Carlton's objections (R. at 184-194). The resulting Decree, after allowing Mr. Carlton various offsets and credits based upon numbers appearing in the Findings, awarded Mrs. Carlton judgment for an

additional $129,246.00 above and beyond the $22,041.00 in assets and approximately $30,000.00 in temporary support that she had already received from this 5-1/2-year marriage to which she had contributed less than $25,000.00.

SUMMARY OF ARGUMENT

The assets of these parties at the time of trial were substantial and derived largely from pre-marital assets. It was necessary, therefore, for the trial court to inventory and value the assets that the parties brought into the marriage and to determine which, if any, of the assets owned by the parties at the time of the termination of the marriage constituted marital assets acquired through the joint efforts of the parties as opposed to representing merely pre-marital assets albeit in possibly changed form. Under such circumstances, Utah law required the trial court to make specific Findings of Fact as to the extent and value of the parties' assets both at the time of their marriage and at the termination of that marriage.

The trial court erred in failing to make Findings of Fact having sufficient specificity reasonably to enable the trial court to determine the nature of the parties' various assets (i.e., marital or pre-marital) and the value of those various assets. Not only were the Findings of Fact entered by the trial court insufficient to permit the trial court to draw this critical distinction, they are totally inadequate to permit this Court to review the propriety of the property distribution attempted by the trial court. Accordingly, this action must be remanded to the trial court for the entry of Findings of Fact having sufficient specificity to enable the trial court to

make an equitable distribution of the parties' assets and to enable this Court to review that distribution.

The property distribution fashioned by the trial court is erroneous because it inequitably distributes to the Respondent wife a substantial portion of the Appellant husband's pre-marital assets. All of the factors consistently articulated by the Utah Supreme Court as bearing upon the distribution of pre-marital assets militate against the granting of any substantial portion of those assets to the wife under the facts of this case. The resulting property distribution is, therefore, inequitable and contrary to Utah law and must be reversed.

ARGUMENT

POINT I: THE DISTRICT COURT ERRED IN FAILING TO MAKE REASONABLY SPECIFIC FINDINGS CONCERNING THE VALUES OF THE PARTIES' PRINCIPAL ASSETS.

The central issue before the District Court in this action was the property distribution. In light of the fact that this was a short-term marriage between older parties and the fact that Mr. Carlton had extensive pre-marital assets, a determination of the values of the parties' assets both at the commencement and at the termination of the marriage was essential to a meaningful determination of the marital estate properly subject to distribution.

Unfortunately, a review of the Findings of Fact and Conclusions of Law entered by the District Court (reproduced infra at A-2 through

A-12) reveals that the District Court failed to make any specific determinations on these crucial issues, notwithstanding Mr. Carlton's objection (R. at 175-177, reproduced infra at A-19 through A-21) to the proposed Findings. For example, the District Court found that there had been "sizable appreciation" in the "K" Street duplex brought into the marriage by Mr. Carlton but made no effort either to place a value on that asset at the time of the marriage or to quantify the amount of the appreciation. (Findings of Fact, paragraph 9, R. at 187, infra at A-5.) As noted above in the Statement of Facts (supra at 4-5), there was substantial but contradictory expert testimony offered on this precise issue.

Similarly, the District Court found that the parties had "acquired . . . personal property" during their marriage and noted that this property included "stocks and bonds in an investment account with E. F. Hutton Investment Company," but made no effort to determine either the separate or aggregate value of these securities. (Findings of Fact, paragraph 8, R. at 186, infra at A-4.) The trial court also found that the parties had accumulated "numerous bank accounts" and "certificates of deposit," but failed to further identify the accounts or place a value upon them. (Id.) The trial court also found that "accumulations to defendant's retirement account" had occurred during the marriage, but made no effort to determine the amount of those "accumulations." Nor did the trial court make any attempt to delineate which "accumulations" resulted from assets first acquired during the marriage as opposed to those resulting from the reinvestment or appreciation of pre-marital assets.

In fact, the only effort the trial court made to place a value upon the parties' marital estate appears in the Finding to the effect that the "marital appreciation . . . totals $255,327.00." (Findings of Fact, paragraph 13, R. at 187, infra at A-5.) Significantly, while the figure mentioned by the trial court appears to have mathematical precision, it is an amount advocated by neither party and an amount which cannot be derived by any apparent mathematical manipulation of the values appearing in the testimony of the parties and trial exhibits. Since the trial court chose not to place values on the parties' assets at the relevant times, there exists no means by which the mathematically precise, yet inexplicable, figure of $255,327.00 can be reviewed or verified.

The Utah Supreme Court requires that the trial judge in domestic relations matters involving property distribution enter Findings of Fact valuing the parties' assets at the relevant times so as to make meaningful appellate review possible. For example, in *Jones v. Jones*, 700 P.2d 1072 (Utah 1985), the Utah Supreme Court was faced with an appeal from a property distribution in which there were "no findings of fact that fix[ed]" "the values . . . assigned to the various items of property included in the distribution." (700 P.2d at 1074.) Although the Utah Supreme Court recognized the "broad latitude" accorded to the trial court in domestic relations matters, it emphasized that "the trial court must exercise its discretion in accordance with the standards that have been set by this Court. (Id.) In language as applicable to the present case as to the case then before it, the Utah Supreme Court held:

> On the present record, we cannot determine whether the trial court distributed the property equitably. . . . To avoid problems of this nature, *we require that when one of the parties to a property distribution raises a serious question as to the value of one or more of the assets, the trial court's distribution of those assets should be based upon written findings of fact that will permit appellate review. . . .*
>
> . . . .
>
> [T]he gravamen of the [appellant's] claim here is that the distribution was inequitable. *To determine whether equity was done, we must have before us specific findings on the facts pertinent to that issue.*

700 P.2d at 1074 (emphasis added, citations omitted). The Court went on to note that remand was generally the appropriate remedy when the trial court fails to enter sufficient Findings of Fact. Remand is the only available option in this case because the Findings of Fact are so totally inadequate that it is simply impossible to review the propriety of the trial court's distribution of the parties' marital assets.

The Utah Supreme Court is by no means unique in its requirement of Findings from which the value of the parties' property can be determined. For example, in *Martin v. Martin*, 22 Wash. App. 295, 588 P.2d 1235 (1979), as in the present case, it was clear from the record that a dispute existed between the parties and the witnesses called as to the value of the principal assets of the parties but the trial court failed to ascribe values to the various assets. On appeal, the court reversed and remanded, noting:

> [E]xcept for bank balances, the evidence is conflicting as to the value of the property. Neither the findings nor the conclusions attach a value to the various items of property awarded to the parties; nor does the court's oral decision contain any valuations. On this record, we

> are unable to review the fairness of the property division. . . .

588 P.2d at 1236. In the present case, the situation is even more serious because of the very substantial pre-marital assets that Mr. Carlton possessed and because the trial court failed to inventory and value even liquid assets such as bank accounts and listed securities.

Similarly, in *Robinson v. Robinson*, 607 P.2d 550 (Mont. 1980), the trial court's decree and property distribution were reversed and remanded because the Findings failed to ascribe values to the assets distributed. The Montana Supreme Court held:

> [W]ithout the required findings we cannot tell how or why the trial court arrived at the apportionment of the marital estate in this case. The lack of findings is similarly deficient as to the personal property distributed by the trial court.
>
> Accordingly, the judgment is vacated . . . .

607 P.2d at 551. See also, *Schwartz v. Schwartz*, 602 P.2d 175 (Mont. 1979) and *Schultz v. Schultz*, 613 P.2d 1022 (Mont. 1980).

In the present case, the trial court held the matter under advisement for almost seven months after the trial before attempting to announce the ruling.[1] Ironically, at an intervening hearing on Mr. Carlton's motion for relief from the temporary alimony, the trial judge recognized and expressed the quandary created by the delay:

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[1] Such action by the trial court was in direct violation of Section 78-7-25, Utah Code Annotated (1953 as amended), which wisely requires that all matters taken under advisement be decided within sixty days except in extraordinary circumstances beyond the control of the judge.

> Trouble is, when you take one under advisement, you get to looking at it and you get part of it there, and when you go back to review it, you have to go right back to scratch again and start over.

Transcript, R. at 465. Unfortunately, in this case, the trial transcript was not prepared by the court reporter until long after the Findings had been prepared and entered. (R. at 468.) Thus, the trial court faced the impossible task of inventorying and evaluating numerous assets without the benefit of a clear recollection of the witnesses' testimony and with only the trial exhibits and, possibly, his own notes for guidance.

The paucity of information contained within the formal Findings of Fact in this case is further exacerbated by the fact that the trial judge announced his ruling to counsel in chambers without a court reporter and without the benefit of a memorandum decision. Accordingly, the numerous questions left unanswered by the inadequate Findings of Fact cannot be clarified by recourse to either a verbal opinion or a memorandum decision of the trial court.

Having failed to value the parties' respective assets at the time of their marriage, the trial court was simply unable to distinguish between pre-marital assets and the marital estate. Since the trial court could not make this fundamental distinction, the trial court was totally unable to distribute in a fair and equitable manner the assets held by the parties at the termination of their marriage.

POINT II. SUCH FINDINGS AS THE TRIAL COURT DID MAKE ARE UNSUPPORTED BY, OR EVEN CONTRARY TO, THE EVIDENCE ADDUCED AT TRIAL.

Not only are the Findings entered by the trial court in this matter not specific as required by Utah law (see Point I, supra at 9), many of the Findings are either contrary to the evidence presented at trial or totally illogical. For example, the trial court found that Mrs. Carlton "brought into the marriage . . . a 1977 Cordova [sic] automobile; real property located at Saratoga, Wyoming; [and] a hair business and equipment . . . ." (Findings of Fact, paragraph 6, R. at 186, infra at A-4.) This finding is totally inconsistent with the unrefuted testimony of Mrs. Carlton herself at trial. The parties were married June 18, 1979. (R. at 260.) It was Mrs. Carlton's testimony that, prior to that time, she sold her business and home in Wyoming:

Mr. Liapis:	And what happened between October of '78 and your marriage in June of '79 with regard to your relationship?
Mrs. Carlton:	Well, it grew. It -- he proposed to me. I agreed. I made arrangements to take care of my business and arranged for my family, and I moved to Utah in February of 1979.
	. . . .
Q.	What happened to your business in the state of Wyoming?
A.	I sold it, such as it was, and all it was was a leased building. I owned the equipment and stock.
Q.	And how much did you receive from the sale of that business?

A. Right at $7,000.

Q. Did you own anything else prior to your move to Utah?

A. I owned a house or was paying for a house.

Q. And that was subsequently sold?

A. Yes.

. . . .

Q. Did you have any other items?

A. I had a '77 Cordoba.

Q. What happened to the Cordoba?

A. It was sold.

Q. At approximately when?

A. I believe I sold it in March.

Transcript at 10-11. Thus, the Finding is contradicted by Mrs. Carlton's own unrefuted testimony at the trial.

More significant are the defects in Paragraph 13 of the trial court's Findings of Fact. That Finding -- which should, perhaps, more appropriately be characterized as a Conclusion -- reads as follows:

> The Court finds that the marital appreciation in the assets which the parties acquired during the marriage and/or maintained during the marriage, totals $255,327.00. The Court finds that the Plaintiff brought into the marriage and should receive assets totaling $27,228.00, which sum should be taken away from the appreciated asset figure above, leaving an adjusted marital estate of $228,099.00. The Court further finds that the Plaintiff is entitled to one-half of said amounts, or $114,049.00. In addition, Plaintiff should have the value and assets she brought into the marriage of $27,228.00, for a total estate to be awarded to her of $141,277.00.

Findings, paragraph 13, R. at 187-88, reproduced infra at A-5 through A-6.

As already noted in Point I, supra, since the trial court failed to value any of the parties' pre-marital assets, it is impossible to determine how the trial court calculated the $27,228.00 value it ascribed to Mrs. Carlton's pre-marital assets. A fortiori, it is impossible to review the accuracy of that determination. It should be noted, however, that the amount is not consistent with Mrs. Carlton's testimony, it is not consistent with the exhibit that she offered as illustrative of her testimony (Exhibit 12-P, reproduced infra at A-22), and it is not consistent with Mr. Carlton's testimony or the exhibit that he offered (see, Exhibit 26-D, reproduced infra at A-23).

The still greater significance of the defects in Paragraph 13 of the trial court's Findings is the fact that the mathematical manipulations it contains are illogical and meaningless. Even assuming, arguendo, the accuracy of the dollar values, what logic or concept of domestic relations law justifies refunding to Mrs. Carlton her pre-marital assets from the "marital appreciation" determined by the trial court to have occurred? What significance is there to the figure (set by the trial court at $228,099.00) derived by deducting the wife's pre-marital assets from the "marital appreciation?" If the trial court's logic was that the wife should be awarded her pre-marital assets plus one-half of the appreciation that was realized by the parties during the marriage, then logic and equity would both require that the trial court inventory and value the husband's pre-marital assets so that they, together with the other half of the appreciation, could be awarded to

him. This, the trial court failed to do and in effect refused to do by "finding" that the undisputed $100,000.00 diminution in value that had been suffered by Mr. Carlton on his pre-marital Bear Lake property was irrelevant (see Findings, paragraph 20, R. at 189, infra at A-7) although the trial court apparently considered the concurrent appreciation in Mr. Carlton's "K" Street property to be relevant.[2]

What the trial court should have done, and indeed was obligated to do in this case, was to inventory and value the pre-marital assets of each party at the time of the marriage, inventory and value the parties' total assets at the time of the termination of the marriage, and determine which of their assets had been produced during the marriage and which merely represented pre-marital assets, albeit in possibly changed form. Even though the evidence produced and offered to the trial court by both parties was sufficient to accomplish this task, the trial court's findings are totally inadequate either to have provided this critical information to the trial court or to permit this Court to review the distribution effected. Accordingly, the matter must be remanded for the determination and entry of the required, critical Findings.

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[2] Since the trial court appears -- however erroneously -- to have considered the passive appreciation in value realized with respect to the "K" Street property, logic and equity would both compel similar consideration of the depreciation that occurred in similar real property during precisely the same time frame. By erroneously considering the appreciation to be a marital asset and then ignoring the concurrent depreciation of similar assets, the trial court compounded its error.

POINT III. THE PROPERTY DISTRIBUTION IS ERRONEOUS BECAUSE IT INEQUITABLY DISTRIBUTES TO THE WIFE A SUBSTANTIAL PORTION OF APPELLANT'S PRE-MARITAL ASSETS.

While a precise review of the effect of the trial court's property distribution is not possible due to the defects in the Findings discussed in the preceding Points, it is apparent that the ultimate effect of the distribution is to award to Mrs. Carlton a substantial portion of Mr. Carlton's pre-marital assets. In addition to the $29,000.00 received by Mrs. Carlton in cash by way of temporary support, the trial court's Decree of Divorce awarded her another $141,277.00 in property settlement plus substantial personal property. (Decree, paragraph 10, R. at 198, reproduced infra at A-16.) Thus, from a 5-1/2-year marriage into which Mrs. Carlton brought assets aggregating less than $25,000.00 and during which she was at no time gainfully employed and during which she did not participate in the management of Mr. Carlton's substantial pre-marital financial holdings, the trial court has awarded her substantially more than $170,000.00. The net result is that the trial court has awarded Mrs. Carlton a substantial portion of Mr. Carlton's pre-marital assets.

While the Utah Supreme Court has recognized the propriety of awarding to one spouse an equitable portion of appreciation that has occurred during the marriage attributable to the other spouse's pre-marital (or even inherited) assets, such awards have been consistently limited to those circumstances in which the appreciation in value has been attributable to the joint effort of the parties during the marriage. Similarly, while the Utah Supreme Court has held that a specific item of pre-marital property may be awarded to the non-contributing spouse if required by unusual circumstances,

the Utah Supreme Court has never permitted the award to one spouse of a substantial interest in either the other spouse's pre-marital assets or any passive appreciation occurring in such assets. In attempting to make such an award in this case, the trial court erred.

In its very recent opinion in *Burke v. Burke*, -- P.2d --, 51 Utah Adv. Rep. 10 (Utah 1987), the Utah Supreme Court was faced with a challenge to the property distribution in a case factually very analogous to the present action. While the marriage in that case was of more than three times the duration of the marriage in this action, the parties had both been married previously and had children from those prior marriages. Unlike the present action, both parties engaged in full-time employment throughout the marriage. During the marriage, the wife inherited several acres of unimproved land. At the time she received the property, it was worth approximately $5,000.00; however, by the termination of the marriage, it had appreciated to more than $120,000.00. At trial, the wife's inherited property was awarded exclusively to her without any offsetting award to the husband on account of the more than $115,000.00 in appreciation that had occurred during the marriage. On appeal, the husband claimed that the appreciation in the property constituted a marital asset and that the trial court had erred in failing to award him any interest in that substantial marital asset. In rejecting this contention, the Utah Supreme Court began its analysis by emphasizing the fundamental goal of property distributions:

> [T]rial courts need to be guided by the general purpose to be achieved by a property distribution, which is to allocate the property in a manner which best serves the needs of the parties and best permits them to pursue their separate lives.

-- P.2d at --, 51 Utah Adv. Rep. at 11 (footnote citation omitted). The Utah Supreme Court then proceeded to discuss the factors to be considered in fashioning an appropriate distribution of assets including those from pre- or extra-marital sources:

> Premarital property, gifts, and inheritances may be viewed as separate property, and in appropriate circumstances, equity will require that each party retain the separate property brought to the marriage. However, the rule is not invariable. In fashioning an equitable property distribution, trial courts need consider all of the pertinent circumstances. The factors generally to be considered are the amount and kind of property to be divided; whether the property was acquired before or during the marriage; the source of the property; the health of the parties; the parties' standard of living, respective financial conditions, needs, and earning capacity; the duration of the marriage; the children of the marriage; the parties' ages at time of marriage and of divorce; what the parties gave up by the marriage; and the necessary relationship the property distribution has with the amount of alimony and child support to be awarded. *Of particular concern in a case such as this is whether one spouse has made any contribution toward the growth of the separate assets of the other spouse and whether the assets were accumulated or enhanced by the joint efforts of the parties.*

-- P.2d at --, 51 Utah Adv. Rep. at 11 (emphasis added, footnote citations omitted).

Having enumerated these factors, the Utah Supreme Court went on to apply them to the facts of the case then before it. At the outset, the Court noted that "except for having urged [the wife] to take her inheritance in land rather than cash, [the husband] concedes that he made no contribution towards the increase in value of the acreage in question and that the income came solely from the effects of inflation on land values." (Id.) Having found that the husband did not actively participate in either the

acquisition of the inherited property or the accumulation of the appreciation that occurred with respect to that property, the Utah Supreme Court held that the trial court had correctly denied him any interest in the wife's extra-marital property and its appreciation. For precisely the same reason, the trial court in this case should have denied Mrs. Carlton any interest in Mr. Carlton's pre-marital property and the appreciation that occurred with respect to that property during the marriage.

Another case in which the Utah Supreme Court reviewed a property distribution under facts very similar to those before this Court in the present case is *Preston v. Preston*, 646 P.2d 705 (Utah 1982). In that case, the parties both had children from prior marriages and were married for approximately seven years. The only substantial factual difference between *Preston* and the present action is that, in *Preston*, the wife "brought substantial properties to the marriage"; whereas, in the present action, Mrs. Carlton brought relatively few assets to the marriage. During their marriage, in that case, the parties constructed a recreational cabin, which had a value at the time of trial of $34,000.00. The parties both jointly worked on the construction of the cabin but the evidence demonstrated that the husband contributed slightly more than $9,000.00 to the project from his pre-marital assets. The District Court divided the cabin equally between the parties. The husband appealed, contending that this distribution deprived him of the pre-marital property that he had contributed to the project. On appeal, the Utah Supreme Court agreed and reversed the trial court, holding:

> [T]he husband should have been given credit for [his] $9,310.93 contribution (*together with the proportion of appreciation in value attributable thereto*) before the value of the cabin was divided between the parties. . . .

646 P.2d at 706 (emphasis added, citations omitted). Thus, the Utah Supreme Court reversed the trial court's property distribution not only because it failed to restore to the husband his contribution of pre-marital assets but also because it failed to award to the husband the appreciation in value that had occurred during the marriage attributable to those assets. For these same reasons, the property distribution fashioned by the trial court in this action is erroneous.

The Utah Supreme Court applied these same fundamental principles in *Jesperson v. Jesperson*, 610 P.2d 326 (Utah 1980). That case, also, involved a relatively short-term marriage between older persons. The wife brought substantial cash assets to the marriage while the husband brought "virtually no assets." During the marriage, the parties purchased, with the wife's pre-marital cash, a series of mobile homes which the husband renovated with his labor. Each was sold at a profit. Just prior to the end of the marriage, the parties sold for $27,000.00 a mobile home that they had purchased for $19,000.00. The trial court ordered that these funds, the parties' only substantial asset, be distributed so that the wife would be reimbursed for the $19,000.00 purchase price of the mobile home (on the theory that it had been purchased with her pre-marital assets), and that the wife would also receive 77% of the remaining sales proceeds (on the theory that while the appreciation realized in the mobile home was due to the husband's labor, it was the wife's pre-marital assets that had made the acquisition of the asset

possible). The husband appealed, contending he was entitled to a greater share of the asset. The Utah Supreme Court rejected this contention, holding:

> In making a property division, a court may properly consider such things as the length of the marriage and parties' respective contributions to the marriage. This marriage lasted less than six years and no children issued therefrom. . . . [The husband] brought no assets into the marriage. . . . It was not unreasonable for the court to permit [the wife] to withdraw from the marital property the equivalent of those assets [she] brought into the marriage. *All that may be considered to be marital property acquired through the joint efforts of the parties was therefore the proceeds from the sale of the [mobile] home over and above its purchase price . . . .*

610 P.2d at 328 (footnote citation omitted, emphasis added). Even though, under the facts of the case then before it, the appreciation that had been realized in the pre-marital asset was attributable in substantial part to the labor of the non-contributing spouse (and therefore constituted a marital asset), the Utah Supreme Court emphasized the importance to be attached to the source of the contribution of the pre-marital asset itself:

> [I]t was [the wife's] financial ability alone that permitted the purchase of the mobile home. Except for said fact, there would have been no profits of sale to be divided.

610 P.2d at 329. For exactly the same reason, except for Mr. Carlton's pre-marital assets, there would have been no property to divide in this case. All of the factors articulated by the Utah Supreme Court militate, in the present case, against any award to Mrs. Carlton of Mr. Carlton's pre-marital assets. In attempting to make such an award, the trial court erred.

Based upon the Utah Supreme Court's decisions in *Burke*, *Preston*, and *Jesperson*, discussed in the preceding paragraphs, it is apparent that the

factors to be considered by the trial court in connection with property distributions involving pre-marital assets primarily include the source of the property; whether it was acquired before or during the marriage; the health of the parties; their standard of living; the duration of the marriage; the number of children, if any, of the marriage; the parties' relative ages; any particular equities concerning what the parties may have given up by reason of the marriage; and whether the appreciation in the marital property was merely passive or was instead a result of the active efforts of the non-contributing spouse.

In the present case, the source of the substantial pre-marital assets was clearly Mr. Carlton. Although the trial court failed to specifically evaluate the assets, it is apparent that the overwhelming majority of the assets brought into this marriage came from Mr. Carlton. Those assets were acquired by him prior to the marriage. Significantly, it was his testimony at trial that these were assets that he "acquired over 40 years of work and practice" and that he had been accumulating them for his "retirement and the so-called golden years and as an estate for [his] children, their inheritance." (R. at 419.) Thus, the source-of-asset factor indicates that Mr. Carlton's pre-marital assets should have been restored to him.

It was the undisputed testimony at trial that Mrs. Carlton was in good health (R. at 84), but that Mr. Carlton had a heart condition, high blood pressure, allergies, and asthma (R. at 132). While the parties were able to travel relatively frequently in connection with Mr. Carlton's work, it was his undisputed testimony that their lifestyle was "frugal" (R. at 135), a statement that was attested to in a dramatic fashion by the fact that during the five-

year marriage, they purchased no major household appliances, furniture, or automobiles (R. at 442-43). There were no children born as issue of this marriage (R. at 260), and Mrs. Carlton is some 15 years younger than Mr. Carlton (R. at 330), who was a few days away from his 65th birthday at the trial of the trial (R. at 331). Therefore, the personal-circumstance factors also militate strongly in favor of restoring to Mr. Carlton his pre-marital assets.

While Mrs. Carlton sold a residence and beauty shop business in Wyoming prior to the marriage (see, supra at 15-16), it was also her testimony that the economic conditions in Wyoming had deteriorated, that she could not make a living in Wyoming (R. at 84), where there was "a beauty shop on every corner" (R. at 97). Accordingly, it is apparent that she gave up little if anything of value for this marriage. This factor indicates that Mr. Carlton's pre-marital assets should have been restored to him.

Finally, it was Mr. Carlton's undisputed testimony that the appreciation that had occurred during the marriage in his pre-marital assets, which consisted mostly of stocks and securities, was as a result of passive investment rather than any joint effort of the parties during the marriage. (R. at 142.) Accordingly, this is not a case in which the appreciation of pre-marital assets that occurred during the marriage was the product of some joint effort by the spouses. This factor strongly suggests that the appreciation as well as the pre-marital assets themselves should have been awarded to Mr. Carlton.

Appreciation in pre-marital property can be considered a marital asset only if it is both the product of the spouses' joint efforts during the

marriage and a real and meaningful increase in value. As demonstrated in the foregoing paragraphs, any passive appreciation that may have occurred with respect to Mr. Carlton's pre-marital assets during this marriage was not a result of joint efforts to which Mrs. Carlton contributed. Moreover, the undisputed evidence before the trial court clearly demonstrated that there was no real overall appreciation in Mr. Carlton's pre-marital assets during the marriage. Thus, for both reasons, the trial court's property distribution cannot be justified as an attempt to distribute appreciation perceived by the trial court to be part of the marital estate.

In this case, the evidence at trial demonstrates that there was little, if any, real increase in the net value of Mr. Carlton's pre-marital assets during the marriage. This determination can be made only by comparing the aggregate value of his pre-marital assets at the time of the marriage with the aggregate value of those assets at the termination of the marriage. In order to make this comparison meaningful, the aggregate values at both times must be expressed in comparable terms. Thus, logic compels adjustment of the values to compensate, inter alia, for the pernicious effects of inflation. This is particularly important in a case, such as the present, where the pre-martial assets were accumulated and held by an older person to provide a source of living expenses and enjoyment during the retirement years when employment income will, inevitably, diminish.

In this case, it was undisputed that the cost of living, as measured by the Federal government's Consumer Price Index, had resulted in a substantial diminution in the purchasing power of the dollar during the 5-1/2 years of this marriage. (See, Exhibit 30-D, received R. at 334,

reproduced infra at A-24 through A-25.) In order to have maintained the same real purchasing power, Mr. Carlton would have had to have had, at the time that the marriage ended, $1.45 in assets for every $1.00 that he had at the beginning of the marriage. Thus, Mr. Carlton would have needed more than $1,100,000.00 in assets at the time of trial to have been in the same position financially as he was at the time of the marriage in June of 1979, when he had $761,925.00 in assets. (See, Exhibit 35-D, reproduced infra at A-26.)

Notwithstanding the substantial diminution in purchasing power that had occurred during the marriage, the trial court expressly refused to consider this factor in determining "the equities in this marital estate." (Findings, paragraph 10, R. at 187, infra, at A-5.) Accordingly, the trial court thus further erred by refusing to consider relevant evidence necessary to an appropriate determination of what property properly constituted the marital estate of these parties and how that marital estate should be distributed.

The appreciation in pre-marital assets that occurred during this marriage does not constitute a marital asset subject to division both because that appreciation was not the result of the joint efforts of the parties and because there was no real appreciation at all when the values of Mr. Carlton's pre-marital assets are expressed in comparable terms by adjusting for the decrease in purchasing power resulting from inflation during the tenure of the marriage.

Under such circumstances, the trial court was, under firmly established Utah law, obligated to distribute the parties' assets in such a way

that each received essentially the pre-marital assets contributed to the marriage together with any appreciation that occurred during the marriage attributable to those assets. The only marital estate subject to distribution was those assets that the parties, working together during the marriage, had created. Since the trial court failed to make any effort to segregate and value those assets which properly constituted the marital estate, the property distribution is erroneous and must be reversed.

CONCLUSION

The trial court in a domestic relations action is required to enter Findings of Fact that are sufficiently specific to enable the trial court to identify and fairly evaluate the parties' assets. In this case, the Findings of Fact entered by the trial court are totally devoid of the required specificity. As a result, the trial court was unable to distinguish between Mr. Carlton's pre-marital assets (which should have been awarded to him) and those marital assets that would have been subject to distribution. Under these circumstances, the action must be remanded to the trial court for the purpose of making and entering appropriate Findings sufficient to permit the trial court to fashion an equitable property distribution and sufficient to permit this Court to review that distribution.

The trial court erred in attempting to distribute to Mrs. Carlton a substantial interest in the pre-marital assets and financial holdings possessed by Mr. Carlton at the time of the marriage. Neither those pre-marital assets nor the appreciation in value in those assets that occurred during the marriage resulted from or was contributed to by the joint efforts

of the parties. As such, they did not constitute marital assets and it was error for the trial court to award any substantial portion of those pre-marital assets to Mrs. Carlton. The inequitable property distribution fashioned by the trial court in this case is contrary to Utah law and must be reversed.

RESPECTFULLY SUBMITTED this ____ day of February, 1987.

DART, ADAMSON & PARKEN

By _____
B. L. Dart

By _____
John D. Parken

Counsel for Appellant

CERTIFICATE OF HAND-DELIVERY

I hereby certify that on the _____ day of February, 1987, I caused four (4) true and correct copies of the foregoing Appellant's Brief to be hand-delivered to Kent M. Kasting and Paul H. Liapis of Gustin, Adams, Kasting & Liapis, 48 Post Office Place, Salt Lake City, Utah 84101.

_____

ADDENDUM

TABLE OF CONTENTS

FILMED

FILED IN CLERK'S OFFICE
Salt Lake County, Utah

AUG 22 1986

H. Dixon Hindley, Clerk 3rd Dist. Court
By Pat Jones
Deputy Clerk

PAUL H. LIAPIS - 1956
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Salt Lake City, Utah 84101
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IN THE DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

----------ooOoo----------

VERLORA CARLTON,	:	
Plaintiff,	:	FINDINGS OF FACT AND CONCLUSIONS OF LAW
v.	:	
FRANK HAYDEN CARLTON,	:	Civil No. D-84-4686
Defendant.	:	Judge Jay E. Banks

----------ooOoo----------

This matter having come on regularly for trial on the 18th and 19th days of December, 1985, before the Honorable Jay E. Banks, one of the Judges of the above-entitled Court, Plaintiff appearing in person and by and through her attorney, Paul H. Liapis, and Defendant appearing in person and by and through his attorney, B. L. Dart, and the parties having been duly sworn and examined under oath, and documentary evidence having been marked and received by the Court, and more than three months having elapsed since the filing of Plaintiff's Complaint, and the Court having heard the arguments of counsel for Plaintiff and Defendant and having inquired into the legal sufficiency of the evidence so adduced, and being fully advised in the premises, and the Court

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having taken the same under advisement and having met with counsel in chambers on the 11th day of July, 1986, and having rendered his decision, does now make, adopt and find the following:

FINDINGS OF FACT

1. Plaintiff and Defendant were bona fide and actual residents of Salt Lake County, State of Utah, for more than three months immediately prior to the filing of the Complaint herein.

2. Plaintiff and Defendant are husband and wife, having been married on the 18th day of June, 1979, in Garden City, Utah, and having separated in December, 1984.

3. No children have been born as issue of this marriage, and none are expected.

4. On numerous occasions prior to the filing of Plaintiff's Complaint herein, Defendant treated Plaintiff cruelly, causing great mental distress and suffering in that, among other things, Defendant was associating with other women, has lied to Plaintiff and has caused numerous arguments between the parties, all of which has destroyed the feelings of love and affection once held by Plaintiff for Defendant, causing this marriage to exist in name only.

5. On numerous occasions prior to the filing of Defendant's Counterclaim herein, Plaintiff treated Defendant cruelly, causing great mental distress and suffering in that, among other things, Plaintiff harassed Defendant and left the

Defendant upon his return from Wyoming, all of which has destroyed the feelings of love and affection once held by Defendant for Plaintiff, causing this marriage to exist in name only.

6. The Court finds that the Plaintiff brought into the marriage furniture, furnishings and appliances; horse equipment; a 1977 Cordova automobile; real property located at Saratoga, Wyoming; a hair business and equipment; an IRA account and personal effects and belongings.

7. The Court finds that the Defendant brought in to the marriage a duplex located at 573 K Street, Salt Lake City, Utah; Bear Lake property; a lot in Oakley; a 1977 Cordova automobile; a 1977 Chrysler Wagon; various stocks and bonds which Defendant listed separately from those acquired during the marriage; an accounting practice; a horse; and his personal effects and belongings.

8. The Court finds that the parties, during the course of their marriage, have acquired the following personal property the 1984 Lincoln; stocks and bonds in an investment account with E. F. Hutton Investment Company; accumulations to Plaintiff and Defendant's IRA account and Defendant's KEOGH Plan; numerous bank accounts; Certificates of Deposit; 6 bronze sculptures and accumulations to the Defendant's retirement account.

9. The Court finds that the parties acquired a one-half interest in a subdivision in Carbon County, Wyoming, a lot in

Saratoga, Wyoming, and that there has been a sizeable appreciation in the home which Defendant brought into the marriage. The Court has considered the appraisals received from both Plaintiff and Defendant, and has averaged the appraisals of their experts to arrive at the value and appreciation in the property on K Street.

10. The Court finds that the Defendant has failed to convince the Court as to any need to apply a cost of living percentage to the assets Defendant brought into the marriage before making a determination as to the equities in this marital estate.

11. The Court finds that the respective IRA Accounts of both Plaintiff and Defendant should be offset against one another.

12. The Court finds that the acquisition of the new automobile by Defendant and the value of the 1977 Cordova automobile driven by the Plaintiff are an offset and that each should be awarded those assets. The Court further finds that the parties disposed of Plaintiff's Cordova automobile and Plaintiff used the Defendant's Cordova automobile during the marriage.

13. The Court finds that the marital appreciation in the assets which the parties acquired during the marriage and/or maintained during the marriage, totals $255,327.00. The Court finds that the Plaintiff brought into the marriage and should

receive assets totalling $27,228.00, which sum should be taken away from the appreciated asset figure above, leaving an adjusted marital estate of $228,099.00. The Court further finds that the Plaintiff is entitled to one-half of said amounts, or $114,049.00. In addition, Plaintiff should have the value and assets she brought into the marriage of $27,228.00, for a total estate to be awarded to her of $141,277.00.

14. The Court finds that at the time of the separation in this matter, Plaintiff took with her, less her IRA accounts and appreciation, assets worth $12,041.00, which should be deducted from the $141,277.00 sums, leaving a balance of $129,236.00, which should be awarded to the Plaintiff as her share of the marital estate. The Court finds that the two Sandia Federal bank accounts Nos. 08-24002119 and 08-7080911-2 in the respective sums of $17,929.32 and $16,508.32, and the Valley Bank checking account No. 01-02-2113 in the sum of $5,845.00 should be divided equally between the parties, with Plaintiff's share of $20,111.71 to be credited against the amount owed Plaintiff of $129,236.00 The Court finds that Plaintiff should also be awarded the Saratoga lot valued at $10,000.00 and that the remaining sum of $99,124.29 awarded Plaintiff should be paid to her by the transfer of stocks and bonds held by the parties in the E. F. Hutton Investment account equal to that sum of money, with said transfer to occur on or before Friday, July 25, 1986.

15. The Court finds that the Defendant had paid Plaintiff alimony during the pendency of this matter and has included said payments into the property calculations set forth above.

16. The Court finds that the Plaintiff, at the time of the Trial, was employed at Life Like Styles For Men, with a gross income of $800.00 per month and a net income of $638.00.

17. The Court finds that the Defendant, at the time of the Trial in this matter and based upon his adjusted gross income for 1983 as set out in his Financial Declaration Form, found that the Defendant's gross income was $9,273.00 per month and his net income was $5,306.00 per month.

18. The Court finds that the parties have outstanding debts and obligations as follows: The first mortgage on the K Street property, a loan to the Plaintiff's mother and debts that each of the parties had incurred since their separation.

19. The Court finds that both Plaintiff and Defendant have incurred attorney's fees in connection with this matter.

20. The Court finds that Defendant has failed to convince the Court that Defendant should be given any credit for a decrease or loss in value of the Bear Lake property during the course of the marriage, nor that any such loss should decrease the marital assets.

From the foregoing Findings of Fact, the Court now makes and adopts its:

CONCLUSIONS OF LAW

1. Plaintiff and Defendant are each awarded a Decree of Divorce, one from the other, upon the grounds of mental cruelty, with said Decree to become final upon signing and entry of the Decree of Divorce herein.

2. The home located at 573 K Street, Salt Lake City, Utah, be and the same is hereby awarded to the Defendant as his sole and separate property and free and clear of any interest of the Plaintiff. Defendant is ordered to assume and pay all debts and obligations associated with said home and to hold the Plaintiff harmless therefrom.

3. Plaintiff is awarded as her sole and separate property the lot in Saratoga, Wyoming, free and clear of any interest of the Defendant, subject to the taxes owing against said property.

4. Defendant is awarded as his sole and separate property the one-half interest in the subdivision in Carbon County, Wyoming, free and clear of any interest of the Plaintiff and subject to any taxes or obligations owing thereon, and the Bear Lake property in Fish Haven, Idaho.

5. Plaintiff's right of alimony from Defendant is terminated.

6. Defendant is awarded as his sole and separate property the 1984 Lincoln automobile, together with the obligation owing thereon; the Chrysler Wagon and the 1967 One-Ton truck; the furniture, furnishings, fixtures in his possession; his IRA

accounts; his Tracy Collins Tax Conference Committee account No. 71-29-162-9; his Tracy Collins checking account No. 71-24-049-3; the Valley Bank 60-month Certificate of Deposit; the Valley Bank Money Market -01-07-9727; the Valley Bank savings account No. 21-113818; the United Saving account No. 0310518089; the 6 bronze sculptures known as First Jump Out, When Ropes Were Trouble, Winter Help, On The Hook, For Thirty A Month and Between Right and Wrong; his accounting business assets and obligations associated therewith; and his personal effects and belongings.

7. Plaintiff is awarded as her sole and separate property the 1977 Cordova automobile; her IRA account; the furniture, furnishings, fixtures and appliances presently in her possession; the Pagosa Bond in her name; the 100 shares of Utah Power & Light Stock; the 100 shares of Arizona Power Stock; her E. F. Hutton Investment Account; her First Security checking account; the gray mare horse; and her personal effects and belongings.

8. Plaintiff and Defendant are ordered to divide equally the Sandia Federal Bank Account No. 08-24002119 in the sum of $17,929.32; the Sandai Saving Account No. 08-7080911-2 in the sum of $16,508.32; and the Valley Bank checking account No. 01-02-211-3 in the sum of $5,845.00, with said division to occur forthwith.

9. Plaintiff is awarded judgment against the Defendant as a property settlement the sum of $141,277.00. Said sum is to be paid in the following manner: $12,041.00 is to be deducted from

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said amount for the stocks and bonds which Plaintiff took with her at the time of separation; $20,111.71 representing Plaintiff's one-half of the two Sandia Federal Bank Accounts and the Valley Bank checking account; $10,000.00 for the value of the Saratoga lot in Wyoming; and the transfer by Defendant to Plaintiff of stocks and bonds equal in current dollar value to the remaining sum of $99,124.29. Said stocks and bonds should be transferred to the Plaintiff on or before the 25th day of July, 1986.

10. Plaintiff should assume and pay and hold the Defendant harmless therefrom the following debts and obligations: The loan to her mother and any debts and obligations she has incurred in her own name since the filing of the Complaint in this matter.

11. Defendant should assume and pay and hold the Defendant harmless therefrom the following debts and obligations: The debts and obligations associated with the K Street property, his business and debts or obligations he has incurred in his own name since the filing of the Complaint in this matter.

12. Plaintiff and Defendant are each awarded their own IRA accounts, together with all appreciate therein and the Defendant is awarded his KEOGH Plan, together with all appreciation therein.

13. Defendant's request that the marital estate be decreased by the drop in value of the Bear Lake Property is denied.

14. Defendant's request that a cost of living appreciation be applied to those assets which he brought into the marriage, before division, is denied.

15. The parties are each awarded as their sole and separate property, to do with as they choose, the life insurance policies presently in force on their life.

16. The parties should each assume and pay their own attorney's fees and costs incurred in this matter.

17. The parties are ordered to execute any and all documents necessary to carry forth the intent of this Order.

DATED this 22nd day of Aug, 1986.

BY THE COURT:

Jay E. Banks

JAY E. BANKS
DISTRICT COURT JUDGE

APPROVED AS TO FORM:

B. L. DART
Attorney for Defendant

CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the foregoing was mailed, postage pre-paid, to B. L. Dart, 310 South Main, Suite 1330, Salt Lake City, Utah 84101, this 17th day of July, 1986.

Paul H Lupes

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...NED

JUDGMENT

FILED IN CLERK'S OFFICE
Salt Lake County, Utah
AUG 22 1986
H. Dixon Hindley, Clerk 3rd Dist. Court
By Pat Jones
Deputy Clerk

PAUL H. LIAPIS - 1956
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48 Post Office Place
Salt Lake City, Utah 84101
Telephone: 532-6996

IN THE DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

Bk 209 NO. 198
8-25-86 - 2:20 pm

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VERLORA CARLTON,	:	
Plaintiff,	:	DECREE OF DIVORCE
v.	:	
FRANK HAYDEN CARLTON,	:	Civil No. D-84-4686
Defendant.	:	Judge Jay E. Banks

----------ooOoo----------

This matter having come on regularly for trial on the 18th and 19th days of December, 1985, before the Honorable Jay E. Banks, one of the Judges of the above-entitled Court, Plaintiff appearing in person and by and through her attorney, Paul H. Liapis, and Defendant appearing in person and by and through his attorney, B. L. Dart, and the parties having been duly sworn and examined under oath, and documentary evidence having been marked and received by the Court and more than three months having elapsed since the filing of Plaintiff's Complaint and the Court having heard the arguments of counsel for Plaintiff and Defendant and having inquired into the legal sufficiency of the evidence so incurred and being fully advised in the premises, and the Court

having taken the same under advisement and having met with counsel in chambers on the 11th day of July, 1986, and the Court having made and entered herein its written Findings of Fact and Conclusions of Law, and upon motion of Paul H. Liapis of GUSTIN, ADAMS, KASTING & LIAPIS, attorneys for Plaintiff:

NOW THEREFORE, IT IS HEREBY ORDERED ADJUDGED AND DECREED as follows:

1. The Plaintiff and Defendant be and they are each hereby awarded a Decree of Divorce from the other upon the grounds of mental cruelty, and the marriage between Plaintiff and Defendant be and the same is hereby dissolved, and the parties are hereby free and absolutely released from the bonds of matrimony and all the obligations thereof with said Decree to become final upon signing and entry of the Decree of Divorce herein.

2. The home located at 573 K Street, Salt Lake City, Utah, be and the same is hereby awarded to Defendant as his sole and separate property, free and clear of any interest of the Plaintiff, subject to his assumption of all debts and obligations against said property.

3. Plaintiff be and she is hereby awarded as her sole and separate property the lot in Saratoga, Wyoming, free and clear of any interest of the Defendant. Plaintiff should assume and pay the taxes owing against said property.

4. Defendant be and he is hereby awarded as his sole and separate property the one-half interest in the subdivision in

Carbon County, Wyoming, free and clear of any interest of Plaintiff and subject to any debts and taxes owing thereon.

5. Defendant be and is hereby awarded as his sole and separate property the Bear Lake property, free and clear of any interest of the Plaintiff and subject to any debts owing thereon.

6. Plaintiff is not awarded any alimony from the Defendant and the same is terminated.

7. Defendant be and he is hereby awarded as his sole and separate property the 1984 Lincoln automobile, together with the obligation owing thereon; the Chrysler Wagon and the 1967 One-Ton truck; the furniture, furnishings, fixtures in his possession; his IRA accounts; his Tracy Collins Tax Conference Committee account No. 71-29-162-9; his Tracy Collins checking account No. 71-24-049-3; the Valley Bank 60-month Certificate of Deposit; the Valley Bank Money Market -01-07-9727; the Valley Bank savings account No. 21-113818; the United Saving account No. 0310518089; the 6 bronze sculptures known as First Jump Out, When Ropes Were Trouble, Winter Help, On The Hook, For Thirty A Month and Between Right and Wrong; his accounting business assets and obligations associated therewith; and his personal effects and belongings.

8. Plaintiff be and she is hereby awarded as her sole and separate property the 1977 Cordova automobile; her IRA account; the furniture, furnishings, fixtures and appliances presently in her possession; the Pagosa Bond in her name; the 100 shares of Utah Power & Light Stock; the 100 shares of Arizona Power Stock;

her E. F. Hutton Investment Account; her First Security checking account; the gray mare horse; and her personal effects and belongings.

9. Plaintiff and Defendant are each hereby ordered to divide equally the Sandia Federal Bank Account No. 08-24002119 in the sum of $17,929.32; the Sandai Saving Account No. 08-7080911-2 in the sum of $16,508.32; and the Valley Bank checking account No. 01-02-211-3 in the sum of $5,845.00, with said division to occur forthwith.

10. Plaintiff be and is hereby awarded judgment against the Defendant as a property settlement the sum of $141,277.00. Said sum is to be paid in the following manner: $12,041.00 is to be deducted from said amount for the stocks and bonds which Plaintiff took with her at the time of separation; $20,111.71 representing Plaintiff's one-half of the two Sandia Federal Bank Accounts and the Valley Bank checking account; $10,000.00 for the value of the Saratoga lot in Wyoming; and the transfer by Defendant to Plaintiff of stocks and bonds equal in current dollar value to the remaining sum of $99,124.29. Said stocks and bonds should be transferred to the Plaintiff on or before the 25th day of July, 1986.

11. Plaintiff and Defendant be and they are each hereby awarded their own IRA accounts, together with all appreciation therein and the Defendant is awarded his KEOGH Plan, together with all appreciation therein.

12. Defendant's request that a cost of living appreciation be applied to those assets which he brought into the marriage, before division, be and the same is hereby denied.

13. Defendant's request that the marital estate be decreased by the drop in value of the Bear Lake property be and the same is hereby denied

14. The parties be and they are each hereby awarded as their sole and separate property, to do with as they choose, the life insurance policies presently in force on their life.

15. Plaintiff be and is hereby ordered to assume and hold Defendant harmless therefrom the following obligations: The loan to her mother and any debts and obligations she has incurred in her own name since the filing of the Complaint in this matter.

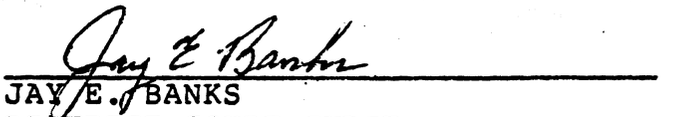
16. Defendant be and is hereby ordered to assume and hold Plaintiff harmless therefrom the following obligations: The debts and obligations associated with the K Street property, his business and any debts or obligations he has incurred in his own name since the filing of the Complaint in this matter.

17. The parties be and they are each hereby ordered to assume and pay their own attorney's fees and costs incurred herein.

18. The parties be and they are each hereby ordered to do and perform all the matters and things required by each of them to be done herein.

DATED this 22nd day of May, 1986.

BY THE COURT:



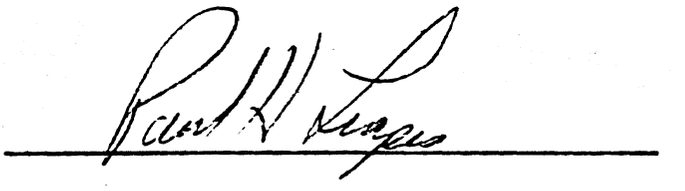
JAY E. BANKS
DISTRICT COURT JUDGE

APPROVED AS TO FORM:

B. L. DART
Attorney for Defendant

CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the foregoing was mailed, postage pre-paid, to B. L. Dart, 310 South Main, Suite 1330, Salt Lake City, Utah 84101, this 17th day of July, 1986.



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B. L. DART (818)
Attorney for Defendant
Suite 1330
310 South Main
Salt Lake City, Utah 84101
Telephone: (801) 521-6383

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---oooOooo---

VERLORA CARLTON,	:	
Plaintiff,	:	OBJECTIONS TO FINDINGS AND DECREE
v.	:	
FRANK HAYDEN CARLTON,	:	Civil No. D84-4686
Defendant.	:	Judge Banks

---oooOooo---

Defendant by his attorney, B. L. Dart, hereby objects to the Findings of Fact and Conclusions of Law prepared by plaintiff's attorney in the following particulars:

1. Defendant objects to the second sentence of paragraph 12 of the Findings of Fact in that there was no finding made by the court that defendant gifted his Cordoba automobile to the plaintiff during the marriage.

2. Defendant objects to the Finding of Fact paragraph 13 in which there is a finding that there has been an appreciation in marital assets of $255,327 for the reason that the basis by which the Court reached this conclusion is not set

forth, and as such the finding is not sufficient. This finding is further objected to on the basis that the calculations as stated do not accurately compute.

3. Defendant objects to the Finding of Fact paragraph 15, the second sentence of which should be deleted since it attempts to insert information into the case post-trial.

4. Defendant objects to paragraph 6 of the Conclusions of Law in that the 60-month certificate of deposit with Valley Bank is the same account as Account #21-105264 with Valley Bank. As prepared, the conclusion appears to create more accounts than exist.

5. Defendant objects to paragraph 15 of the Conclusions of Law in that nowhere is it shown that defendant has been given credit for temporary alimony sums paid by plaintiff during the pendency of this action. As such the final clause of this conclusion of law is objectionable.

6. Defendant further objects to the Decree of Divorce insofar as it carries forward the items objected to above in the Findings of Fact and Conclusions of Law.

DATED this 28th day of July, 1986.

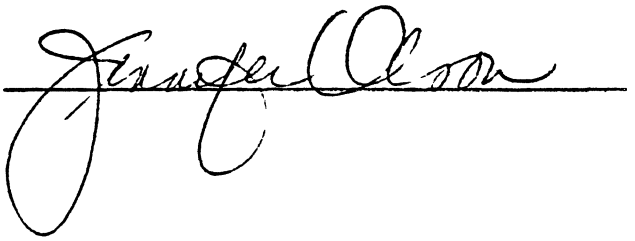
B. L. DART

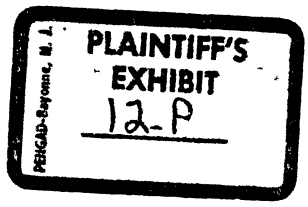
MAILING CERTIFICATE

I hereby certify that on the 28th day of July, 1986, I mailed a copy of the foregoing Objections to Findings and Decree to:

Paul H. Liapis
48 Post Office Place
Third floor
Salt Lake City, Utah 84101

Attorney for plaintiff.





ITEMS OWNED BY PLAINTIFF PRIOR TO MARRIAGE

Verlora Carlton v. Frank Hayden Carlton

A. Horse Equipment:

Saddle and blanket; one pair of stirrups (wide, heavy ones on Frank's present saddle); and spurs.

B. Household Items:

Kirby vacuum cleaner and attachments; covered wagon lamp; ceramic cowboy sculpture; one pair of mounted longhorn wall ornaments; a framed ink-print picture of a little boy, horse and dog; and two rugs - one Mexican woven and one Navajo woven, black, gray and off-white.

C. Furnishings:

Ceramic covered wagon cookie jar; a set of carving knives; two sets of western glasses; one set of small brandy type glasses; a tree cup and stoneware cups in cupboard; and two pillows.

D. Personal Items:

A step scraper; two pair of golf shoes; miscellaneous clothes and shoes; and three pairs of cowboy boots.

IRA account - $3,918.72; home in Saratoga, Wyoming, net sale proceeds $10,035.60; and sale of Plaintiff's beautician equipment and business - $7,000.00.*

E. Furniture owned prior to the marriage - given to Plaintiff's children on Defendant's instructions.

* Said cash assets were used to acquire the following items:

1. Pagosa Water and Sanitation Tax Free Bonds, value $5,000.00.

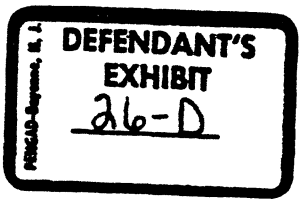
2. 100 shares Utah Power and Light, value $2,550.00.

3. 100 shares Arizona Public Service, value $2,433.00.

4. E. F. Hutton Money Management Fund, value $468.00.

SEPARATE ASSETS OF VERLORA CARLTON AT MARRIAGE AND AT SEPARATION

	Marriage 6/79	Divorce Filing 12/31/84
Pagosa Water & Sanitation		$ 5,000
Utah Power & Light		2,550
Arizona Public Service		2,433
Valley Bank IRA		2,000
United Savings IRA (Fin. decl.)	$ 3,918	10,058
Automobile (Depo p11)	4,500	
Sale of business (Depo p8)	7,000	
Sale of home (Depo p10)	10,035	
	$24,935	$22,041
Adjustment for loss of buying power resulting from inflation 6/79 to 12/84	x1.45	
	$36,182	$22,041



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JOB SERVICE Utah Department of Employment Security

A DIVISION OF THE INDUSTRIAL COMMISSION OF UTAH

December 18, 1985

B.L. Dart
310 South Main
Suite 1330
Salt Lake City, Utah 84101

Dear Mr. Dart:

In reply to your request, comparisons of the purchasing power of the dollar in different time periods may be calculated with Consumer Price Index statistics from the attached table. The effect of inflation on the value of the dollar from June 1979 to December 1984 may be calculated as follows:

$$\frac{\text{December 1984 CPI-U}}{\text{July 1979 CPI-U}} = \frac{315.5}{216.6} = 1.457$$

$$\frac{1.000}{1.457} = .686$$

Thus, in December 1984, the purchasing power of the dollar was $.686 with respect to June 1979 dollars.

Looking at the same problem from a different angle:

> A market based selection of goods and services costing $100 in June 1979, would cost $145.70 in December 1984.

I hope this information is helpful. Please call again if we can be of further assistance.

Sincerely,

K E Jensen

Kenneth E. Jensen
Labor Market Economist

Attachment

jm

DEFENDANT'S EXHIBIT 30-D

Administrative Office - 174 Social Hall Avenue - P.O. Box 11249 Salt Lake City, Utah 84147 Telephone (801) 533-2400

Year	January	February	March	April	May	June	July	August	September	October	November	December	Annual Average	% Change from Prior Year
1967	98.6	98.7	98.9	99.1	99.4	99.7	100.2	100 5	100.7	101.0	101.3	101.6	100.0	2.8
1968	102.0	102.3	102 8	103.1	103.4	104.0	104.5	104.8	105.1	105.7	106.1	106.4	104.2	4.2
1969	106.7	107.1	108 0	108.7	109.0	109.7	110.2	110.7	111.2	111.6	112.2	112.9	109.8	5.4
1970	113.3	113.9	114.5	115.2	115.7	116.3	116.7	116.9	117.5	118.1	118.5	119.1	116.3	6.0
1971	119.2	119.4	119.8	120.2	120.8	121 5	121.8	122.1	122.2	122.4	122.6	123.1	121.3	4.3
1972	123.2	123 8	124.0	124.3	124.7	125.0	125.5	125.7	126.2	126.6	126.9	127.3	125.3	3.3
1973	127.7	128.6	129.8	130.7	131.5	132.4	132.7	135.1	135.5	136.6	137.6	138.5	133.1	6.2
1974	139.7	141.5	143.1	143.9	145.5	146.9	148.0	149.9	151.7	153.0	154.3	155.4	147.7	11.0
1975	156.1	157.2	157.8	158.6	159.3	160.6	162.3	162.8	163.6	164.6	165.6	166.3	161.2	9.1
1976	166.7	167.1	167 5	168.2	169.2	170.1	171.1	171.9	172.6	173.3	173.8	174.3	170.5	5.8
1977	175.3	177.1	178.2	179 6	180.6	181.8	182.6	183 3	184.0	184.5	185.4	186.1	181.5	6.5
1978	186.9	188.3	189.8	191.3	193.2	195.1								
-U	187.2	188.4	189 8	191.5	193.3	195.3	196.7	197.8	199.3	200.9	202.0	202.9	195.4	7.7
-W	187.1	188.4	189 7	191.4	193.3	195.3	196.7	197.7	199.1	200.7	201.8	202.9	195.3	7.6
1979-U	204.7	207.1	209 1	211.5	214.1	216.6	218.9	221.1	223.4	225.4	227.5	229.9	217.4	11.3
-W	204.7	207.1	209 3	211.8	214.3	216.9	219.4	221.5	223.7	225.6	227.6	230.0	217.7	11.5
1980-U	233.2	236.4	239 8	242 5	244.9	247.6	247.8	249.4	251.7	253.9	256.2	258.4	246.8	13.5
-W	233.3	236 5	239 9	242 6	245.1	247.8	248 0	249.6	251.9	254.1	256 4	258.7	247 0	13.5
1981-U	260 5	263.2	265 1	266.8	269.0	271.3	274.4	276.5	279 3	279.9	280 7	281.5	272.4	10.4
-W	260.7	263 5	265 2	266.8	269.1	271.4	274.6	276 5	279.1	279.7	280.4	281.1	272.3	10.2
1982-U	282.5	283 4	283 1	284 3	287.1	290.6	292 2	292.8	293.3	294.1	293.6	292.4	289 1	6.1
-W	282.1	282.9	282 5	283.7	286.5	290.1	291.8	292 4	292.8	293.6	293.2	292 0	288 6	6.0
1983-U	293.1	293.2	293.4	295.5	297.1	298.1	299.3	300.3	301.8	302.6	303.1	303.5	298 4	3.2
-W	292.1	292.3	293.0	294.9	296.3	297.2	298.2	299.5	300.8	301.3	301.4	301.5	297.4	3.0
1984-U	305.2	306 6	307 3	308.8	309.7	310.7	311.7	313.0	314.5	315.3	315.3	315 5	311.1	4.3
-W	302.7	303 3	303.3	304.1	305.4	306.2	307.5	310.3	312.1	312.2	311.9	312.2	307.6	3.4
1985-U	316.1	317.4	318 8	320.1	321.3	322.3	322 8	323.5	324.5	325.5				
-W	312 6	313.5	315.3	316.7	317.8	318.7	319.1	319 6						

-U = CPI for all urban consumers. -W = CPI for urban wage earners and clerical workers.

Source: Prepared by the Utah Department of Employment Security from tabulations published by Bureau of Labor Statistics, United States Department of Labor.

SEPARATE ASSETS OF FRANK CARLTON AT MARRIAGE AND AT SEPARATION

	Marriage 6/79	Divorce Filing 12/31/84
Nancy Carlton Note	-0-	$ 24,688
Duplex--573 K Street (Webber appraisal)	$116,000	122,000
Increase in value by mortgage deduction		8,387
Bear Lake Lot ($240,000 land/$60,000 cabin--1979) $120,000 land/$80,000 cabin--1984)	300,000	200,000
Stock/securities--premarriage (See Exhibit A attached)	137,235	210,900
Stocks/securities acquired during marriage (Exhibit B)	-0-	60,000
Stocks--premarriage (Exhibit C)	10,918	-0-
Checking/Savings Accounts (Exhibit D)	130,675	83,458
Retirement Accounts (Tax adjusted) (Exhibit D)	54,067	88,944
Bronzes (Exhibit E)	-0-	7,600
Vehicles (Exhibit F)	13,000	4,305
Saratoga Subdivision Partnership	-0-	17,500
Saratoga Lot	-0-	10,000
TOTALS	$761,925	**$837,732**
Adjustment for loss of buying power resulting from inflation 6/79 to 12/84	x 1.45	
	$1,104,791	**$837,732**